

volumes grow, their costs are pushed down and they ought to be required to pass those cost savings on to consumers. The course of entry seen in Figures 1 and 2 has now given lie to the view that LECs naturally evolve to take over their markets; the opposite has been happening as entrants have steadily made inroads into and eroded LECs' prior dominance. And, as Mr. Klick and Mr. Baranowski note, there exists no reliable evidence that incumbent LECs are experiencing specific gains in economies of scale.⁵² Indeed, they may well be losing scale economies as intermodal and intramodal competitors enter and gain market share. Imposing a "g-factor" on ILECs in the absence of strong evidence that one is appropriate (and when it is questionable how one could be calculated accurately) risks skewing competition for the same reasons as imposing an erroneous and overly aggressive "X-factor."

76. **(Re)regulation under Rate-of-Return Standards.** In 1991, the Commission wisely chose to transition from a framework based on rate-of-return regulation to a market-driven system with backstop price-caps. The Commission subsequently eliminated the "sharing" requirements of its price-cap regime upon finding that they replicated the tendency of rate-of-return regulation to depress incentives for efficient behavior.⁵³ Yet, AT&T's suggestion that the Commission should reinitialize special access Phase II rates at a level sufficient to generate an 11.25% rate-of-return price-cap on LECs' special access services amounts to little more than a return to rate-of-return regulation.⁵⁴

77. It is well-recognized that rate-of-return regulation is fraught with adverse consequences. In particular, as the Commission notes regarding its movement away from rate-of-return regulation in the early 1990s: "[A] rate of return regulatory structure bases a firm's allowable rates directly on the firm's reported costs and was thus subject to criticisms that it removed the incentive to reduce costs and improve productive

⁵² See Klick & Baranowski Declaration ¶¶ 35.

⁵³ 1997 Performance Review Order at 16645, 16650, 16698-16700 ¶¶ 1, 14, 144-49.

⁵⁴ Notice at 1997, 2002-03 ¶¶ 6, 19.

efficiency.”⁵⁵ In fact, rate-of-return regulation is especially difficult to implement effectively when the regulated firm is not protected by exclusive franchises and is subject to competition from opportunistic new entrants. As detailed below, under such circumstances, regulators ultimately confront the need to make arbitrary allocations of costs across the firm’s various service offerings and markets, and they ultimately lose effective control over the regulated firm’s prices to the forces of competition.

78. It is the essence of the transition that telecommunications is going through that the incumbent LECs are increasingly subject to competitive forces across increasing ranges (product and geographic) of their businesses. Rate-of-return regulation in this context is a complex challenge. First, even if regulators set rates across the full spectrum of service offerings so as to target an allowed maximum rate of return *ex ante* (or reinitialize to a set of such rates), it is competition rather than regulation that will determine if such rates “stick” in the marketplace. Regulated rates in competitive lines of business that are set higher than competitive levels imply the need for the regulated firm to either offer discounts off of the regulated maximums or suffer artificial losses of sales to lower-priced, unregulated firms. In either case, overall company revenues will end up failing to generate the allowed rate of return—thereby, sending the regulator back to the drawing board. If regulated maximum rates turn out to be too low relative to competitive levels, the regulator will have distorted market prices and discouraged competitors (who cannot compete with the artificially low price).

79. To make matters worse, getting the array of the regulated firm’s prices (even if at only the point of a reinitialization) “right” in the sense of hitting competitive targets in competitive markets and proxying for competitive prices in non-competitive markets is practically impossible. The problem lies in finding non-arbitrary cost allocations such that rates on individual services and in individual markets can coherently be said to reflect “cost plus a reasonable return.” It is the essence of network industries that products, services, and markets share irreducibly joint and common costs.

⁵⁵ *Id.* at 1997 ¶ 9, citing *CALLS Order* at 12968 ¶¶ 13, 15.

80. An example of the foregoing is found in AT&T's assertion that "rates of return" for price-cap LECs' special access services have been exorbitantly high.⁵⁶ As an initial matter, one would expect to see substantial rates of return—in the form of a risk-adjusted cost of capital—in any competitive market characterized, like this one, by enormous sunk costs and growing competitive entry. And it would make no sense, from a long-term perspective, to reduce substantial margins in markets increasingly subject to competition, since such margins make competitive entry more, not less, likely. In any event, there is no sound empirical basis for concluding that incumbent LEC rates of return are indeed high. AT&T's contrary argument is based on the particular—and economically arbitrary—attribution of costs embedded in Automated Reporting Management Information System (ARMIS) data.⁵⁷ As David Toti explains, the ARMIS data have become particularly meaningless since the Commission froze allocations of reported costs to particular service and jurisdictional categories in 2001.⁵⁸ More generally, as the Commission has explained, "[t]he allocation of these common costs to multiple services according to our accounting rules necessarily reflects policy judgments that may not reflect how price-cap LECs would allocate common costs if they operated in fully competitive markets."⁵⁹

81. The problem with even this view of the regulatory challenge of cost allocation is that firms in competitive markets do not "allocate" costs across products in any meaningful sense. Firms in competitive settings take the prices they can get in the marketplace, continuing to produce and supply so long as those prices cover individual products' variable costs, and hope that prices across all products yield sufficient overall revenue to cover the firm's overall costs (including joint and common costs) so as to yield a rate of return that can hold investors' capital in the firm. Thus, in the competitive

⁵⁶ See also, Notice at 2002-03 ¶ 19, citing AT&T Petition for Rulemaking at 3-4, 8-9, 14.

⁵⁷ See Toti Declaration and Klick & Baranowski Declaration for further discussion.

⁵⁸ See Toti Declaration ¶ 16-20.

⁵⁹ Notice at 2015 ¶ 62.

setting, economic rates of return are an *outcome*, not a decision variable, of price determination for the multi-product firm, and economic rates of return on individual product lines are essentially undefined.

82. Also, the problems of rate-of-return regulation of the partially competitive, multi-product, multi-market firm are further compounded by the regulator's dependence on accounting measures of cost and return. Data such as ARMIS inherently rely on accounting definitions, rather than economic definitions, of costs. The Commission has taken due note of the limitations of the accounting cost-based measures of rate of return as measures of whether a firm is earning an *economically* reasonable rate of return.⁶⁰ These limitations obscure determination of whether a regulated firm is actually earning a reasonable economic return consonant with market conditions and investors' alternatives. In fact, this problem is particularly applicable for firms in a dynamic industry subject to variegated competition across products, services, and markets and rapid technological change—i.e., firms like price-cap LECs. In such settings, the going-forward *economic* value of a firm's investments—the base upon which a regulated firm's rate of return is properly calculated—can differ dramatically from investment bases calculated under accounting conventions targeted at such matters as physically useful life and formulaic rates of depreciation.⁶¹

⁶⁰ Notice at 2015 ¶¶ 61-62.

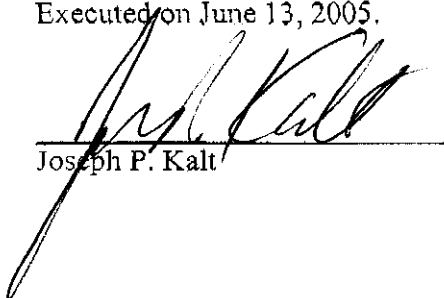
⁶¹ *Id.*, citing a leading economic treatise on the matter.

83. In the present context, reinitializing rates to a rate-of-return standard—indeed, an allowable rate of return last in use approximately 15 years ago⁶²—would signal to the special access market that investment in facilities, technologies, and deployment, no matter how compelling the economic opportunity, is subject to a profit-slashing regulatory about-face. That would be precisely the wrong message to send to this industry at this critical moment in its competitive evolution.

⁶² At that time, the risks associated with operating in the industry were those of a substantially regulated and protected firm. This contrasts with the arguably much different and riskier nature of today's incumbent LECs, which face both greater exposure to market-driven pricing forces and marketplace competition by non-regulated firms.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on June 13, 2005.



Joseph P. Kalt

Figure 1
**NUMBER OF KNOWN WHOLESALE COMPETITORS TO SBC IN THE
MARKET FOR SPECIAL ACCESS SERVICES
SELECTED SBC MSAs**

<u>MSA</u>	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>Change</u> <u>'99 - '04</u>
Abilene, TX							
Austin, TX							
Bakersfield, CA							
Champaign/Urbana, IL							
Chicago, IL							
Cleveland, OH							
Columbus, OH							
Dallas, TX							
Detroit, MI							
El Paso, TX							
Flint, MI							
Fresno, CA							
Grand Rapids, MI							
Hartford, CT							
Houston, TX							
Indianapolis, IN							
Kansas City, KS							
Little Rock, AR							
Los Angeles, CA							
Lubbock, TX							
Madison, WI							
Milwaukee, WI							
New Haven, CT							
Oklahoma City, OK							
Oxnard, CA							
Peoria, IL							
Reno, NV							
Rockford, IL							
Sacramento, CA							
San Antonio, TX							
San Diego, CA							
San Francisco, CA							
South Bend, IN							
St. Louis, MO							
Stockton, CA							
Tulsa, OK							
Wichita, KS							

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Note: Numbers in *italics* are full years of dedicated transport and special access Phase II price flexibility.
Source: Survey prepared on behalf of SBC.

Figure 2
**KNOWN WHOLESALE COMPETITORS TO SBC IN THE MARKET FOR SPECIAL ACCESS SERVICES
 SELECTED SBC MSAs**

MSA	1999	2000	2001	2002	2003	2004
Abilene, TX						
Austin, TX						
Bakersfield, CA						
Champaign/Urbana, IL						
Chicago, IL						
Cleveland, OH						
Columbus, OH						

[Redacted content for Abilene, TX and Austin, TX]

[Redacted content for Bakersfield, CA]

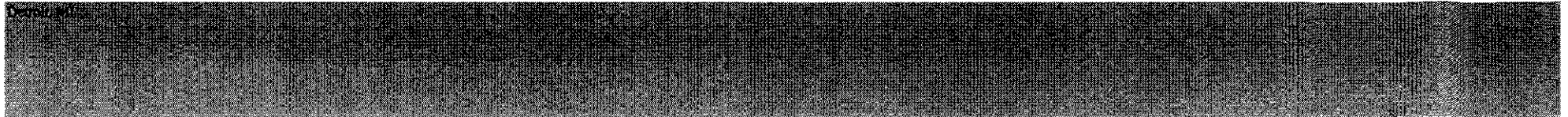
[Redacted content for Champaign/Urbana, IL and Chicago, IL]

[Redacted content for Cleveland, OH]

[Redacted content for Columbus, OH]

Figure 2
**KNOWN WHOLESALE COMPETITORS TO SBC IN THE MARKET FOR SPECIAL ACCESS SERVICES
 SELECTED SBC MSAs**

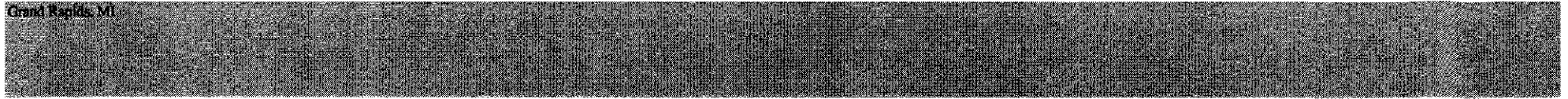
MSA	1999	2000	2001	2002	2003	2004
Dallas, TX						
El Paso, TX						
Fresno, CA						
Hartford, CT						



El Paso, TX



Fresno, CA



Hartford, CT

Figure 2
**KNOWN WHOLESALE COMPETITORS TO SBC IN THE MARKET FOR SPECIAL ACCESS SERVICES
 SELECTED SBC MSAs**

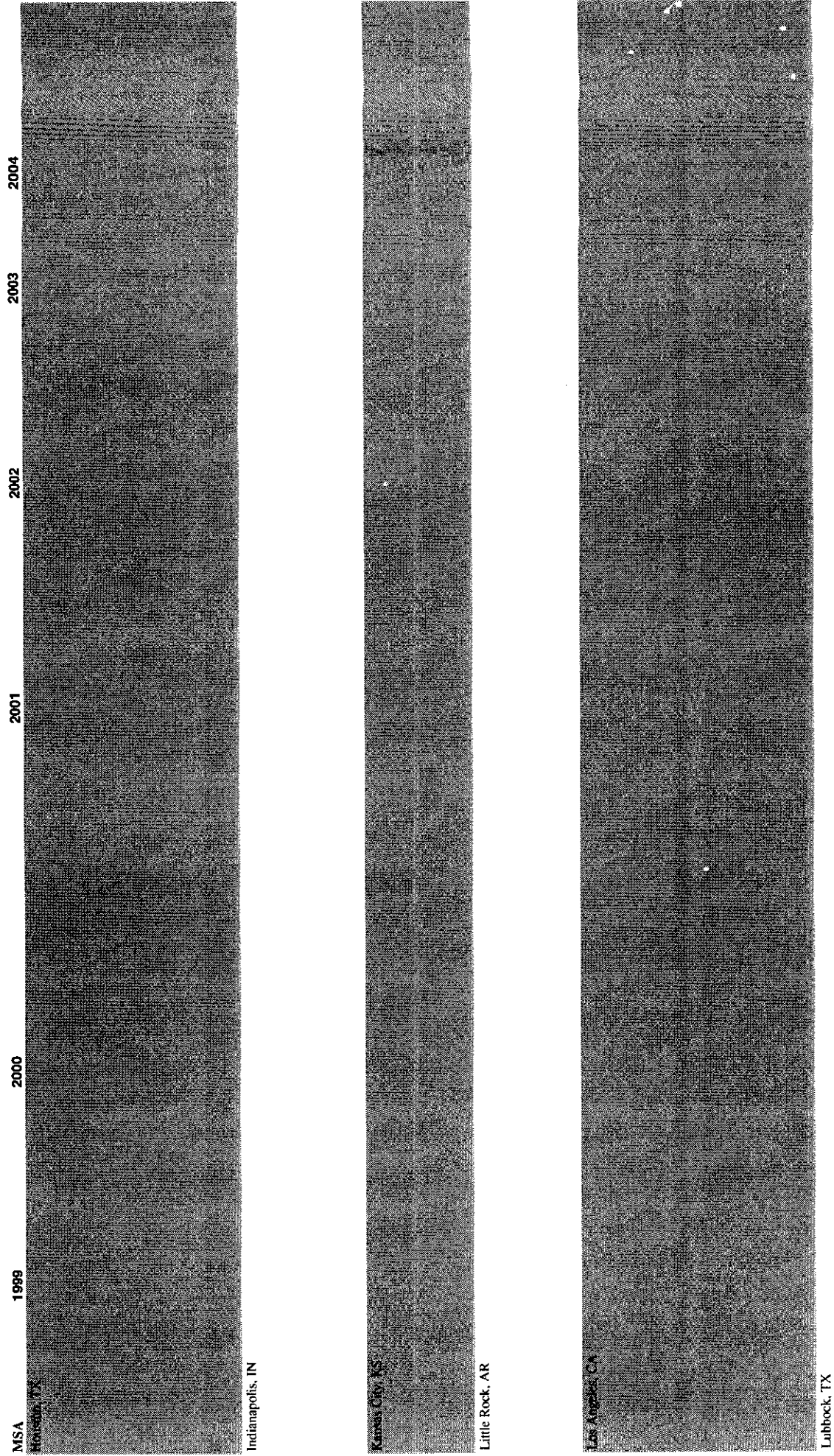


Figure 2
**KNOWN WHOLESALE COMPETITORS TO SBC IN THE MARKET FOR SPECIAL ACCESS SERVICES
 SELECTED SBC MSAs**

MSA	1999	2000	2001	2002	2003	2004
Milwaukee, WI						
Milwaukee, WI						
Oklahoma City, OK						
Oklahoma City, OK						
Peoria, IL						
Peoria, IL						
Rockford, IL						
Rockford, IL						
San Antonio, TX						
San Antonio, TX						

Figure 2
 KNOWN WHOLESALE COMPETITORS TO SBC IN THE MARKET FOR SPECIAL ACCESS SERVICES
 SELECTED SBC MSAs

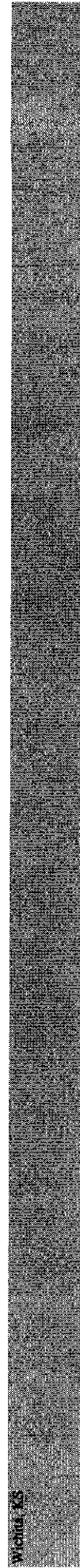
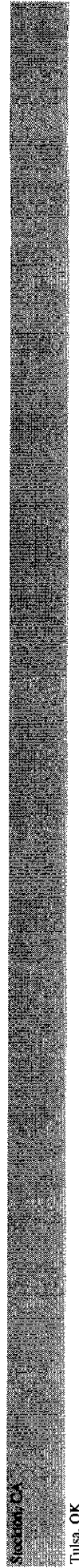
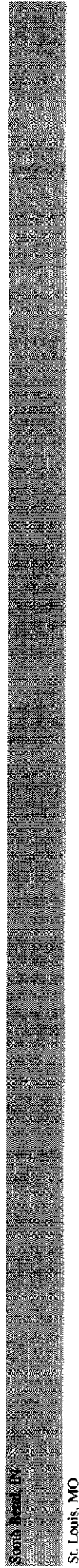
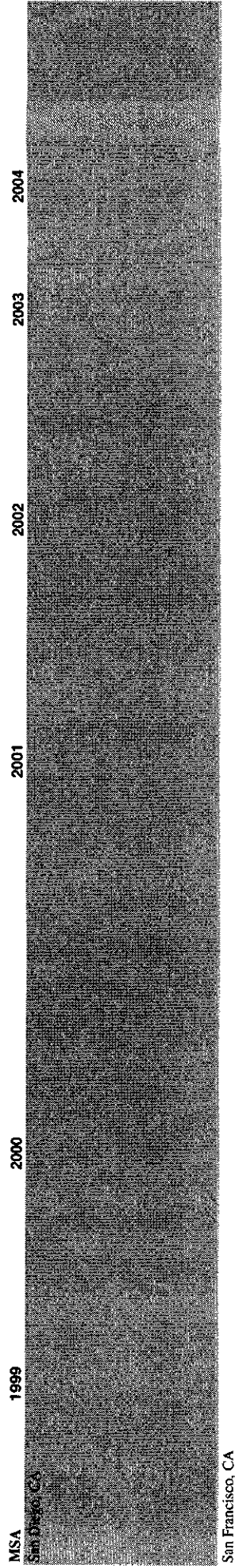


Figure 3
**AVERAGE SBC PRICES FOR DS1 AND DS3 SERVICES
2001 - 2004**

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Note: Prices are after adjustments for overlay discounts.

Source: SBC Internal Revenue Information.

ATTACHMENT 1
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PROFESSIONAL EXPERIENCE

JOHN F. KENNEDY SCHOOL OF GOVERNMENT, HARVARD UNIVERSITY, CAMBRIDGE, MA
Ford Foundation Professor of International Political Economy, 1992 - present

Areas of specialization include Industrial Organization, Economics of Antitrust and Regulation, Natural Resource Economics, Public Choice and Political Economy, Microeconomic Theory.

Member, Standing Committee on Higher Degrees in Political Economy and Government, 2002 - present

Faculty Chair, Interfaculty Initiative, Harvard University Native American Program, 2000 - present

Co-Director, The Harvard Project on American Indian Economic Development, 1987 - present

Chair, Economics and Quantitative Methods Cluster, 1995 - 2000

Professor of Political Economy, 1986 - 1992

Faculty Chair and Academic Dean for Research, 1992 - 1994

Chairman, Environment and Natural Resources Program, Center for Science and International Affairs, 1990 - 1994

Chairman of Degree Programs, 1990 - 1992

Chairman of Ph.D. Programs, 1989 - 1990

Assistant Director for Natural Resources, Energy and Environmental Policy Center, 1985 - 1990

Co-Director, Harvard Study on the Future of Natural Gas Policy (with Frank C. Schuller), Energy and Environmental Policy Center, John F. Kennedy School of Government, 1984 - 1986

LEXECON INC, AN FTI COMPANY (AND PREDECESSOR CONSULTING ENTERPRISES)

Senior Economist, 2003 - present (and since 1983 with predecessor enterprises)

DEPARTMENT OF ECONOMICS, HARVARD UNIVERSITY, CAMBRIDGE, MA

Associate Professor of Economics, 1983 - 1986

Assistant Professor of Economics, 1980 - 1983

Instructor in Economics, 1978 - 1980

Taught Economics of Antitrust and Regulation, Intermediate Microeconomics, and Principles of Economics.

PRESIDENT'S COUNCIL OF ECONOMIC ADVISERS, WASHINGTON DC

Junior Staff Economist, 1974 - 1975

Analyzed federal energy, environmental, transportation, and tax policies.

EDUCATION

University of California, Los Angeles

Ph.D. in Economics, 1980

Dissertation: "Federal Control of Petroleum Prices: A Case Study of the Theory of Regulation"

M.A. in Economics, 1977

Stanford University, Stanford, CA

B.A. in Economics, 1973

EXPERT TESTIMONY

General Electric and Bechtel

In an Arbitration Under an Agreement Between the Government of the Republic of Mauritius and the Government of the Republic of India for the Promotion and Protection of Investments Signed on 4 September 1998, and Under the Citral Rules, Capital India Power Mauritius I and Energy Enterprises (Mauritius) Company (Claimants) and the Government of the Republic of India (Respondent). Expert Report (with David M. Newbery and Thomas E. Lumsden), May 23, 2005.

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Duke Energy

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BNSF Railway Company

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Awas Tingni

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PPL Exelon Corporation and Public Service Enterprise Group Incorporated

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Sovereign Risk Insurance Limited

Before the American Arbitration Association, in the matter of ZC Specialty Insurance Company v. Sovereign Risk Insurance Limited, Case No. 50 T 153 0055203, Expert Report, March 10, 2005; Supplemental Report, April 11, 2005.

ExxonMobil Corporation

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PPL Montana

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T-Mobile

In the Superior Court of the State of California, County of Alameda, Judicial Council Coordination Proceeding No. 4332, Cellphone Termination Fee Cases. Affidavit, January 17, 2005.

Shell Oil Company, Texaco Refining and Marketing Inc., Equilon Enterprises LLC.

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In the United States District Court for the District of Massachusetts, Case No. 01-CV-11300-RWZ, Mac's Shell Service, Inc., et al., v. Shell Oil Products Company, LLC, Shell Oil Company, and Motiva Enterprises, LLC. Expert Report, July 6, 2004; Deposition, July 29, 2004; Oral Testimony, November 30 – December 1, 2004.

Equilon Pipeline Company

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ExxonMobil Corporation

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CSX Transportation Inc.

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Before the Surface Transportation Board, Finance Docket No. 27590 (Sub-No.3), Application for Approval of Polling Of Car Service With Respect to Flatcars. January 5, 2004. Rebuttal Verified Statement of Joseph P. Kalt, May 10, 2004.

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In the United States District Court for the Northern District of Georgia, Civil Action No. 1:02-CV-2634CAP, CSX Transportation, Inc. v. State Board of Equalization of the State of Georgia, et al. Expert Report, April 15, 2004; Deposition Testimony, September 24, 2004; Oral Testimony, May 16, 2005.

El Paso Natural Gas Company and Burlington Resources Oil & Gas Company

In the District Court of Washita County State of Oklahoma, Nations Bank, N.A., as Trustee of the Virginia C. Earman Trust; et al. v. El Paso Natural Gas Company and Burlington Resources Oil & Gas Company Case No. CJ-97-68. Expert Report, March 30, 2004.

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Shell Oil Company

In the Court of Common Pleas, Cuyahoga County, Ohio, Donald J. Casserlie, et al., v. Shell Oil Company, et al. Expert Report, January 30, 2004.

Shell Oil Company, Shell Western E&P, Inc., Shell Cortez Pipeline Company, Kinder Morgan CO₂ Company, L.P., Mobil Oil Corporation, Mobil Producing Texas and New Mexico, Inc., and Cortez Pipeline Company

Before the District Court, County of Montezuma, State of Colorado, Celeste C. Grynberg, individually and as trustee on behalf of the Rachel Susan Trust, the Stephen Mark Trust, and the Miriam Zela Trust; and Jack J. Grynberg v. Shell Oil Company, Shell Western E&P, Inc., Shell Cortez Pipeline Company, ExxonMobil Corporation formerly known as Mobil Oil Corporation, Mobil Producing Texas and New Mexico, Inc., Cortez Pipeline Company, Kinder Morgan CO₂ Company, L.P. formerly known as Shell CO₂ Company, Ltd., and John Does 1-10 Whose True Names Are Unknown. Affidavit, June 12, 2003; Expert Report, June 20, 2003; Supplemental Expert Report, August 15, 2003; Deposition, December 2, 2003; Affidavits, January 6, 2004; Affidavit, January 22, 2004; Oral Hearing Testimony, October 14, 2004.

Motiva Enterprises, LLC, Shell Oil Company, Shell Oil Products Company, LLC, and Equiva Trading Company

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Shell Western E & P Inc., Shell Gas Trading Company, and Shell Oil Company

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El Paso Merchant Energy, L.P.

United States of America before the Federal Energy Regulatory Commission, Public Utilities Commission of the State of California, California Electricity Oversight Board v. Sellers of Long-Term Contracts to the California Department of Water Resources, Sellers of Energy and Capacity Under Long-Term Contracts with the California Department of Water Resources. Prepared Direct Testimony, October 17, 2002; Rebuttal Testimony, November 14, 2002; Deposition, November 24, 2002; Oral Testimony, December 10, 2002; Prepared Reply Testimony, March 20, 2003.

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El Paso Merchant Energy, L.P.

United States of America, Before the Federal Energy Regulatory Commission, PacifiCorp v. Reliant Energy Services, Inc., Morgan Stanley Capital Group Inc., Williams Energy Marketing & Trading Company, El Paso Merchant Energy L.P. Prepared Direct Testimony, October 8, 2002; Prepared Rebuttal Testimony, November 26, 2002; Deposition, December 5, 2002; Oral Testimony, December 18, 2002.

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Before the American Arbitration Association, In the Matter of an International Commercial Arbitration Between Powerex Corp., formerly British Columbia Power Exchange Corporation, and Alcan Inc., formerly Alcan Aluminum Limited. Expert Report, November 20, 2002; Oral Testimony, December 12, 2002.

Mardi Gras Transportation System Inc.

United States of America, Before the Federal Energy Regulatory Commission, Caesar Oil Pipeline Company, LLC. Affidavit, December 5, 2002.

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The Burlington Northern & Santa Fe Railway Company

In the United States District Court for the Western District of Texas, Austin Division, South Orient Railroad Company, Ltd., v. The Burlington Northern & Santa Fe Railway Company and Union Pacific Railway Company. Expert Witness Report, October 30, 2002; Deposition, November 15, 2002.

Texaco Inc., Texaco Exploration and Production Inc., Texaco Trading and Transportation Inc.

In the District Court, 19th Judicial District, Parish of East Baton Rouge, LA, State of Louisiana and Secretary of the Department of Revenue and Taxation v. Texaco Inc.; State of Louisiana and Secretary of the Department of Revenue and Taxation v. Texaco Exploration and Production Inc.; State of Louisiana and Secretary of the Department of Revenue and Taxation v. Texaco Trading and Transportation Inc. Expert Report, November 11, 2002.

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ExxonMobil

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El Paso Merchant Energy, L.P. and Calpine Energy Services, L.P.

United States of America, Before the Federal Energy Regulatory Commission, Nevada Power Company and Sierra Pacific Power Company v. Duke Energy Trading and Marketing, L.L.C., Enron Power Marketing, Inc., El Paso Merchant Energy, L.P., American Electric Power Services Corp.; Nevada Power Company v. Morgan Stanley Capital Group Inc., Calpine Energy Services, L.P., Mirant Americas Energy Marketing, L.P., Reliant Energy Services, Inc., BP Energy Company, Allegheny Energy Supply Company, L.L.C.; Southern California Water Company v. Mirant Americas Energy Marketing, L.P.; Public Utility District No. 1, Snohomish County, Washington, v. Morgan Stanley Capital Group Inc. Prepared Direct Testimony, June 28, 2002; Prepared Answering Testimony, August 27, 2002; Deposition, September 24, 2002.

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Conoco Inc., Amoco Production Company, and Amoco Energy Trading Corp.

United States District Court for the District of New Mexico, Elliott Industries Limited Partnership v. Conoco Inc., Amoco Production Company, and Amoco Energy Trading Corporation. Expert Report, July 1, 2002; Affidavit, July 6, 2002; Deposition, August 13, 2002.

CFM International, Inc.

United States District Court for the Central District of California, Western Division, Aviation Upgrade Technologies, Inc., v. The Boeing Company, CFM International, Inc., and Rolls Royce plc. Expert Report, June 28, 2002.

Elkem Metals Company and CC Metals & Alloys, Inc.

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"Roundtable: Recent Developments in Section 2" (with Arron Edlin, A. Douglas Melamed, and Gary L. Roberts), *Antitrust Magazine*, vol. 18, No. 1, Fall 2003.

"Myths and Realities of Tribal Sovereignty: The Law and Economics of Indian Self-Rule" (with Joseph William Singer), Faculty Research Working Paper Series, John F. Kennedy School of Government, Harvard University, January 2004; and forthcoming in *Current Issues in Native American Research* (ed. by Joseph P. Kalt, Harvard University Native American Program).

"Seizing the Future: Why Some Native Nations Do and Others Don't" (with Stephen Cornell, Miriam Jorgensen, and Katherine A. Spilde), working paper, Harvard Project on American Indian Economic Development, October 2003.

"One Works, the Other Doesn't: Two Approaches to Economic Development on American Indian Reservations" (with Stephen Cornell), working paper, Harvard Project on American Indian Economic Development, November 2002.

The First Nations Governance Act: Implications of Research Findings from the United States and Canada (with Stephen Cornell and Miriam Jorgensen), Report to the British Columbia Assembly of First Nations, July 2002.

"Public Policy Analysis of Indian Gaming in Massachusetts" (with Kenneth Grant and Jonathan B. Taylor), Faculty Research Working Paper Series #RWP02-019, John F. Kennedy School of Government, Harvard University, May 13, 2002.

"Means-Testing Indian Governments: Taxing What Works" (with Jonathan Taylor), in Richard C. Monk, ed., *Taking Sides: Race and Ethnicity*, McGraw-Hill/Dushkin, 2001.

"Where's the Glue? Institutional and Cultural Foundations of American Indian Economic Development" (with Stephen Cornell), *The Journal of Socio-Economics*, vol. 29, 2000.

"Open Access for Railroads? Implications for a Non-Hub, Congestible Network Industry" (with Amy B. Candell), Advanced Workshop in Regulation and Competition, Center for Research in Regulated Industries, May 2000 (unpublished working paper).

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"Sovereignty and Nation-Building: The Development Challenge in Indian Country Today" (with Stephen Cornell), *The American Indian Culture and Research Journal*, vol. 22, no. 3, February 1999.

"Making Research Count in Indian Country: The Harvard Project on American Indian Economic Development" (with Manley A. Begay, Jr., and Stephen Cornell), *Journal of Public Service and Outreach*, vol. 3, no. 1, Spring 1998.

"Successful Economic Development and Heterogeneity of Governmental Form on American Indian Reservations" (with Stephen Cornell), in Merilee S. Grindle, ed., *Getting Good Government: Capacity Building in the Public Sector of Developing Countries*, Harvard University Press, 1997.

"Cultural Evolution and Constitutional Public Choice: Institutional Diversity and Economic Performance on American Indian Reservations" (with Stephen Cornell), Faculty Research Working Paper Series, John F. Kennedy School of Government, January 1995; reprinted in John Lott, ed., *Uncertainty and Economic Evolution: Essays in Honor of Armen A. Alchian*, Routledge Press, 1997.

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"Precedent and Legal Argument in U.S. Trade Policy: Do They Matter to the Political Economy of the Lumber Dispute?" in *The Political Economy of American Trade Policy*, Anne O. Krueger, ed., University of Chicago Press, 1996.

"Do Precedent and Legal Argument Matter in the Lumber CVD Cases?" in *The Political Economy of Trade Protection*, Anne O. Krueger, ed., University of Chicago Press, 1996.

"Introduction: The New World of Gas Regulation" (with Jerry Ellig), J. Ellig and J. P. Kalt, eds., *New Directions in Natural Gas Deregulation*, Greenwood Press, 1995.

"Incentive Regulation for Natural Gas Pipelines" (with Adam B. Jaffe), in J. Ellig and J. P. Kalt, eds., *New Directions in Natural Gas Deregulation*, Greenwood Press, 1995.

"Where Does Economic Development Really Come From? Constitutional Rule Among the Modern Sioux and Apache" (with Stephen Cornell), *Economic Inquiry*, Western Economic Association International, Vol. XXXIII, July 1995, pp. 402 - 426.

"Insight on Oversight" (with Adam B. Jaffe), *Public Utilities Fortnightly*, April 1995.

"The Redefinition of Property Rights in American Indian Reservations: A Comparative Analysis of Native American Economic Development" (with Stephen Cornell), L. H. Legters and F. J. Lyden, eds., *American Indian Policy: Self-Governance and Economic Development*, Greenwood Press, 1994.

"Reloading the Dice: Improving the Chances for Economic Development on American Indian Reservations" (with Stephen Cornell), in J. P. Kalt and S. Cornell, eds., *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, University of California, 1992, pp. 1 - 59.

"Culture and Institutions as Public Goods: American Indian Economic Development as a Problem of Collective Action" (with Stephen Cornell), in Terry L. Anderson, ed., *Property Rights and Indian Economies*, Rowman and Littlefield, 1992.

"The Regulation of Exhaustible Resource Markets" (with Shanta Devarajan), Environmental and Natural Resources Program, Center for Science and International Affairs, Kennedy School of Government, April 1991.

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"Pathways from Poverty: Economic Development and Institution-Building on American Indian Reservations" (with Stephen Cornell), *American Indian Culture and Research Journal*, 1990.

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"How Natural Is Monopoly? The Case of Bypass in Natural Gas Distribution Markets" (with Harry G. Broadman), *Yale Journal on Regulation*, Summer 1989.

"Culture and Institutions as Collective Goods: Issues in the Modeling of Economic Development on American Indian Reservations" (with Stephen Cornell), *Project Report*, Harvard Project on American Indian Economic Development, June 1989.

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"A Review of the Adequacy of Electric Power Generating Capacity in the United States, 1985 - 93 and 1993-Beyond" (with James T. Hamilton and Henry Lee), *Discussion Paper Series*, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, June 1986.

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"Old Gas Decontrol, FERC's Block Billing for Pipelines, and the Winners and Losers in Natural Gas Policy," prepared for the Natural Gas Supply Association (NGSA), December 1985.

"Possibilities for Competition in the Gas Industry: The Roles of Market Structure and Contracts," prepared for Harvard Study on the Future of Natural Gas Policy, Working Group Meeting, October 1985.

"Natural Gas Decontrol, Oil Tariffs, and Price Controls: An Intertemporal Comparison," Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, April 1985.

"Market Structure, Vertical Integration, and Long-Term Contracts in the (Partially) Deregulated Natural Gas Industry," *Discussion Paper Series*, Harvard Institute of Economic Research, Harvard University, April 1985.

"Can a Consuming Region Win under Gas Decontrol?: A Model of Income Accrual, Trade, and Stockholding" (with Robert A. Leone), *Discussion Paper Series*, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, February 1984.

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"Television Industry Self-Regulation: Protecting Children from Competition in Broadcasting" (with George J. Holder), Harvard Institute of Economic Research, Discussion Paper No. 896, April 1982.

"The Use of Political Pressure as a Policy Tool During the 1979 Oil Supply Crisis" (with Stephen Erfle and John Pound), *Discussion Paper Series*, John F. Kennedy School of Government, Harvard University, April 1981.

"Problems of Minority Fuel Oil Dealers" (with Henry Lee), *Discussion Paper Series*, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, April 1981.

OTHER PUBLICATIONS AND LEGISLATIVE TESTIMONY

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"Institution Building: Organizing for Effective Management" in *Building Native Nations: Environment, Natural Resources, and Governance*, ed. by Stephanie Carroll Rainie, Udall Center for Studies in Public Policy, The University of Arizona, 2003.

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Statement to U.S. House of Representatives, Subcommittee on Energy and Mineral Resources, *Federal Oil Royalty Valuation* (HB 3334), Hearing of May 21, 1998.

Statement to the National Gambling Impact Study Commission, *Economic Impact of Gaming by American Indian Tribes*, Hearing of March 16, 1998.

"Measures Against Tribes Are Counterproductive," editorial (with Jonathan B. Taylor), *Indian Country Today*, September 22 - 29, 1997.

"American Indian Economic Development," *Tribal Pathways Technical Assistant Program Newsletter*, February 1997, p. 3.

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"Administration Backsliding on Energy Policy" (with Peter Navarro), *Wall Street Journal*, editorial page, February 9, 1982.

Statement to the Energy and Natural Resources Committee, U.S. Senate, *Government Responses to Oil Supply Disruptions*, Hearing of July 28 - 29, 1981, U.S. Government Printing Office, 1981, pp. 623-630 and 787-801.

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"Redistribution of Wealth in Federal Oil Policy," *San Diego Business Journal*, August 18, 1980, pp. 22-23.

"The Energy Crisis—Moral Equivalent of Civil War" (with Peter Navarro), *Regulation*, January/February 1980, pp. 41-43.

"Windfall Profits Tax Will Reap Bonanza—But For Whom?" (with Peter Navarro), *The Miami Herald*, December 23, 1979, editorial page.

SELECTED PRESENTATIONS

"Linking Tribal Sovereignty to Economic Self-Determination in Indian Country," *The Tribal Leaders Forum*, "Sovereignty in Crisis," Las Vegas, NV, May 27, 2005.

"The State of U.S. Railroads and the Challenges Ahead," briefing of Capitol Hill staff, Association of American Railroads, April 17, 2003.

"The State of the Railroad Industry and the Challenges Ahead," briefing of Roger Nober, Chairman, US Surface Transportation Board, Association of American Railroads, January 28, 2003.

"The Wealth of American Indian Nations: Culture and Institutions," *Federal Reserve Bank of Boston*, December 11, 2002.

"The Roots of California's Energy Crisis: Law, Policy, Politics, and Economics," Regulation Seminar, Center for Business and Government, Kennedy School, Harvard University, November 7, 2002.

"Public Policy Foundations of Nation Building in Indian Country," National Symposium on Legal Foundations of American Indian Self-Governance," Mashantucket Pequot Nation, February 9, 2001.

"Twenty-Five Years of Self-Determination: Lessons from the Harvard Project on American Indian Economic Development," Udall Center for Studies in Public Policy, University of Arizona, November 13 - 14, 1999.

Proceedings of the Fourth Annual DOE-NARUC Natural Gas Conference, Orlando, FL, February 1995.

Keynote Address, "Sovereignty and American Indian Economic Development," Arizona Town Hall, Grand Canyon, AZ, October 1994.

"Is the Movement Toward a Less-Regulated, More Competitive LDC Sector Inexorable?, (Re)Inventing State/Federal Partnerships: Policies for Optimal Gas Use," U.S. Department of Energy and The National Association of Regulatory Utility Commissioners Annual Conference, Nashville, TN, February 1994.

"Cultural Evolution and Constitutional Public Choice: Institutional Diversity and Economic Performance on American Indian Reservations," Festschrift in Honor of Armen A. Alchian, Western Economic Association, Vancouver, BC, July 1994.

"Precedent and Legal Argument in U.S. Trade Policy: Do they Matter to the Political Economy of the Lumber Dispute?" National Bureau of Economic Research, Conference on Political Economy of Trade Protection, February, September 1994.

"The Redesign of Rate Structures and Capacity Auctioning in the Natural Gas Pipeline Industry," Natural Gas Supply Association, Houston, TX, March 1988.

"Property Rights and American Indian Economic Development," Pacific Research Institute Conference, Alexandria, VA, May 1987.

"The Development of Private Property Markets in Wilderness Recreation: An Assessment of the Policy of Self-Determination by American Indians," Political Economy Research Center Conference, Big Sky, MT, December 4 - 7, 1985.

"Lessons from the U.S. Experience with Energy Price Regulation," International Association of Energy Economists Delegation to the People's Republic of China, Beijing and Shanghai, PRC, June 1985.

"The Impact of Domestic Regulation on the International Competitiveness of American Industry," Harvard/NEC Conference on International Competition, Ft. Lauderdale, FL, March 7 - 9, 1985.

"The Welfare and Competitive Effects of Natural Gas Pricing," American Economic Association Annual Meetings, December 1984.

"The Ideological Behavior of Legislators," Stanford University Conference on the Political Economy of Public Policy, March 1984.

"Principal-Agent Slack in the Theory of Bureaucratic Behavior," Columbia University Center for Law and Economic Studies, 1984.

"The Political Power of the Underground Coal Industry," FTC Conference on the Strategic Use of Regulation, March 1984.

"Decontrolling Natural Gas Prices: The Intertemporal Implications of Theory," International Association of Energy Economists Annual Meetings, Houston, TX, November 1981.

"The Role of Government and the Marketplace in the Production and Distribution of Energy," Brown University Symposium on Energy and Economics, March 1981.

"A Political Pressure Theory of Oil Pricing," Conference on New Strategies for Managing U.S. Oil Shortages, Yale University, November 1980.

"The Politics of Energy," Eastern Economic Association Annual Meetings, 1977.

WORKSHOPS PRESENTED

Federal Reserve Bank of Boston; University of Indiana; University of Montana; Oglala Lakota College; University of New Mexico; Columbia University Law School; Department of Economics and John F. Kennedy School of Government, Harvard University; MIT; University of Chicago; Duke University; University of Rochester; Yale University; Virginia Polytechnic Institute; U.S. Federal Trade Commission; University of Texas; University of Arizona; Federal Reserve Bank of Dallas; U.S. Department of Justice; Rice University; Washington University; University of Michigan; University of Saskatchewan; Montana State University; UCLA; University of Maryland; National Bureau of Economic Research; University of Southern California.

OTHER PROFESSIONAL ACTIVITIES

Board of Trustees, The Communications Institute, 2003 - present

Board of Trustees, Fort Apache Heritage Foundation, 2000 - present

Mediator (with Keith G. Allred), Nez Perce Tribe and the North Central Idaho Jurisdictional Alliance, MOU signed December 2002

Mediator, *In the Matter of the White Mountain Apache Tribe v. United States Fish and Wildlife Service*, re: endangered species management authority, May - December, 1994

Steering Committee, National Park Service, 75th Anniversary Symposium, 1991 - 1993

Board of Trustees, Foundation for American Communications, 1989 - 2003

Editorial Board, *Economic Inquiry*, 1988 - 2002

Advisory Committee, Oak Ridge National Laboratory, Energy Division, 1987 - 1989

Commissioner, President's Aviation Safety Commission, 1987 - 1988

Principal Lecturer in the Program of Economics for Journalists, Foundation for American Communications, teaching economic principles to working journalists in the broadcast and print media, 1979 - present

Lecturer in the Economics Institute for Federal Administrative Law Judges, University of Miami School of Law, 1983 - 1991

Research Fellow, Energy and Environmental Policy Center, John F. Kennedy School of Government, Harvard University, 1981 - 1987

Editorial Board, MIT Press Series on *Regulation of Economic Activity*, 1984 - 1992

Research Advisory Committee, American Enterprise Institute, 1979 - 1985

Editor, *Quarterly Journal of Economics*, 1979 - 1984

Referee for *American Economic Review*, *Bell Journal of Economics*, *Economic Inquiry*, *Journal of Political Economy*, *Review of Economics and Statistics*, *Science Magazine*, *Journal of Policy Analysis and Management*, *Social Choice and Welfare*, *Quarterly Journal of Economics*, MIT Press, North-Holland Press, Harvard University Press, *American Indian Culture and Research Journal*

TEACHING EXPERIENCE

Native Americans in the 21st Century: Nation Building I & II (University-wide, graduate and undergraduate); Introduction to Environment and Natural Resource Policy (Graduate, Kennedy School of Government); Seminar in Positive Political Economy (Graduate, Kennedy School of Government); Intermediate Microeconomics for Public Policy (Graduate, Kennedy School of Government); Natural Resources and Public Lands Policy (Graduate, Kennedy School of Government); Economics of Regulation and Antitrust (Graduate); Economics of Regulation (Undergraduate); Introduction to Energy and Environmental Policy (Graduate, Kennedy School of Government); Graduate Seminar in Industrial Organization and Regulation; Intermediate Microeconomics (Undergraduate); Principles of Economics (Undergraduate); Seminar in Energy and Environmental Policy (Graduate, Kennedy School of Government)

HONORS AND AWARDS

First American Public Policy Award, First American Leadership Awards 2005, "Realizing the Vision: Healthy Communities, Businesses, and Economies," National Center for American Indian Enterprise Development, Phoenix, AZ, June 9, 2005.

Allyn Young Prize for Excellence in the Teaching of the Principles of Economics, Harvard University, 1978 - 1979 and 1979 - 1980

Chancellor's Intern Fellowship in Economics, September 1973 to July 1978, one of two awarded in 1973, University of California, Los Angeles

Smith-Richardson Dissertation Fellowship in Political Economy, Foundation for Research in Economics and Education, June 1977 to September 1977, UCLA

Summer Research Fellowship, UCLA Foundation, June 1976 to September 1976

Dissertation Fellowship, Hoover Institution, Stanford University, September 1977 to June 1978

Four years of undergraduate academic scholarships, 1969 - 1973; graduated with University Distinction and Departmental Honors, Stanford University

Research funding sources have included: The National Science Foundation; USAID (IRIS Foundation); Pew Charitable Trust; Christian A. Johnson Family Endeavor Foundation; The Ford Foundation; The Kellogg Foundation; Harvard Program on the Environment; The Northwest Area Foundation; the U.S. Department of Energy; the Research Center for Managerial Economics and Public Policy, UCLA Graduate School of Management; the MIT Energy Laboratory; Harvard's Energy and Environmental Policy Center; the Political Economy Research Center; the Center for Economic Policy Research, Stanford University; the Federal Trade Commission; and Resources for the Future; The Rockefeller Foundation.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Special Access Rates for Price Cap Local)	WC Docket No. 05-25
Exchange Carriers)	
)	
AT&T Corp. Petition for Rulemaking to Reform)	
Regulation of Incumbent Local Exchange Carrier)	RM-10593
Rates for Interstate Special Access Services)	
)	

DECLARATION OF DAVID TOTI
ON BEHALF OF SBC COMMUNICATIONS INC.

I. Introduction

1. My name is David Toti. I am Executive Director – Regulatory Accounting in SBC’s Finance Organization. My responsibilities include supervision of various SBC regulatory accounting and reporting functions including but not limited to the Cost Allocation Manual (CAM), the allocation of costs between regulated and nonregulated services, jurisdictional Separations, affiliate transactions and certain universal service fund reporting. I also supervise the preparation of the ARMIS 43-01, 43-03, and 43-04 reports for SBC.

2. In my 17 years with SBC, I have held a variety of financial related positions in, among other areas, regulatory accounting, corporate accounting, financial planning and benefit finance. I earned a Bachelor’s Degree in Accounting from Northwest Missouri State University in 1981.

II. Purpose of Declaration

3. The purpose of this declaration is to respond to the Federal Communications Commission’s (“Commission”) request for comments, in its Notice of Proposed Rulemaking in